

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BRIAN MISER,	:	
	:	NO. 1:05-CV-00407
Plaintiff,	:	
	:	
	:	
v.	:	
	:	OPINION AND ORDER
	:	
REGINALD WILKINSON, et al.,	:	
	:	
Defendants.	:	
	:	

This matter is before the Court on the Magistrate Judge's August 23, 2005 Report and Recommendation (doc. 12). Plaintiff filed no objection.

In his Report and Recommendation, the Magistrate Judge recommends that this action be dismissed with prejudice, as Plaintiff failed to respond to the Court's August 5, 2005 Order to Show Cause as to why this case should not be dismissed for lack of prosecution (doc. 10). The Magistrate Judge further notes that three Court Orders mailed to Plaintiff have returned undeliverable, and that Plaintiff has been released from prison (doc. 12). Accordingly, the Magistrate Judge indicates dismissal of this pro se civil rights action is appropriate. (Id. citing Fed. R. Civ. P. 41(b), Link v. Wabash R.R., 370 U.S. 626, 630=31 (1962), Jourdan v. Jabe, 951 F.2d 108, 109 (6th Cir. 1991)).

Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation well-taken. By

failing to keep the Court apprised of his current address, Plaintiff demonstrates a lack of prosecution of his action. See, e.g., Theede v. United States Department of Labor, 172 F.3d 1262, 1265 (10th Cir. 1999) (Failure to object to a Magistrate Judge's Report and Recommendation due to delay resulting from party's failure to bring to the court's attention a change in address constitutes failure to object in a timely manner. Because the Recommendation was mailed to the last known address, it was properly served, and party waived right to appellate review). Moreover, Plaintiff's failure to reply to the Court's August 5, 2005 Order to Show Cause demonstrates a failure of Plaintiff to prosecute this action, justifying dismissal pursuant to Fed. R. Civ. P. 41(b).

Accordingly, the Court ADOPTS IN ENTIRETY the Magistrate Judge's Report and Recommendation (doc. 12), DISMISSES WITH PREJUDICE Petitioner's Complaint, for lack of prosecution, and CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith. McGore v. Wigglesworth, 114 F. 3d 601 (6th Cir. 1997).

SO ORDERED.

Dated: January 19, 2006

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge